

December 31, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWA325
Washington, DC 20554

EX PARTE PRESENTATION
Submitted Electronically

Re: *Shielding of Electronic Equipment Against Acts of War or
Terrorism Involving Hostile Use of Electromagnetic Pulse*
RM-10330

Dear Ms. Salas:

The United States Telecom Association (USTA), through the undersigned, hereby files this *ex parte* presentation in the above-referenced proceeding. In accordance with Commission Rule 1.1206(b)(1),¹ this presentation is being filed electronically.

On September 27, 2001, Donald J. Schellhardt and Nickolaus Leggett (Petitioners) filed a "Petition for a Notice of Proposed Rulemaking" (Petition) with the Federal Communications Commission (Commission) wherein they ask the Commission to consider adoption of a rule requiring "that all civilian electronics equipment, subject to FCC jurisdiction and not otherwise exempted, must be shielded against hostile use of an Electromagnetic Pulse (EMP) by enemies of the United States."² In a Public Notice released on November 15, 2001, the Commission solicited statements opposing or supporting the Petition.³ USTA has reviewed the Informational Statement filed by the Alliance for Telecommunications Industry Solutions (ATIS), the Opposition filed by SBC Communications, Inc. (SBC), and the Comments filed by the Verizon telephone companies (Verizon) in response to the Public Notice. On the basis of these filings, USTA urges the Commission to deny the Petition and forgo commencing the requested rulemaking proceeding.

As demonstrated by Verizon, SBC and ATIS, good cause exists to deny the Petition. "The Commission rejected a similar request fifteen years ago, and the industry has since

¹ 47 C.F.R. §1.1206(b)(1).

² Cover letter to Petition, p.1.

³ *Public Notice: Consumer Information Bureau Reference Information Center Petitions For Rulemaking Filed*, Report No. 2512 (rel. Nov. 15, 2001).

addressed the problem by adopting standards to deal with reasonably anticipated EMP levels.”⁴ Now, as then, Petitioners have failed to demonstrate that the public interest would be served by the requested Commission rulemaking. The proffered reasons for commencing the rulemaking (that the United States has enemies willing and able to launch a major EMP attack⁵) are unsupported by credible evidence from sources in a position to realistically evaluate the existence of such a threat or the need for the telecommunications industry to respond beyond those reasonable steps already taken by the industry. As the ATIS informational statement demonstrates, industry standards have been developed to improve the resistance of U.S. telecommunications infrastructures to EMP in response to the 1985 request of the National Security Telecommunications Advisory Committee (NSTAC).⁶ The ATIS submission clearly and unequivocally refutes the assertion by Petitioners that “no EMP shielding standards” “ever came out of the NSTAC ANSI technical standards advisory group.”⁷ There is no credible evidence in the record to allow for the conclusion that existing industry standards concerning EMP protection measures are inadequate to meet U.S. national security or public safety needs in the area of critical telecommunications infrastructures. USTA agrees with SBC that the Commission should deny the petition and “allow the technical advisory groups to work with the telecommunications industry and other industry segments on the continuing development of these [EMP] standards.”⁸

USTA finds the Declaration of Percy E. Pool particularly compelling.⁹ Mr. Pool, a Licensed Professional Engineer, shows that existing standards are adequate to protect telecommunications networks from reasonably-anticipated EMP levels. Further, he concludes that “the measures the petitioners propose to shield every piece of equipment in the network would not prevent harm from a highly-concentrated device capable of producing the very high

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⁴ Verizon at p.1.

⁵ Petition at p.14.

⁶ ATIS at pp.1 and 2. A list of the relevant standards is attached to the ATIS informational statement.

⁷ Petition at p.19.

⁸ SBC at p.1.

⁹ See Verizon attachment - Declaration of Percy E. Pool.

EMP levels they posit.”¹⁰ Encasing the identified equipment in copper or a similar non-conductive material will not provide the protection suggested by Petitioner “because energy is likely to be introduced into the device through cabling and wiring, and the copper shielding generally cannot prevent such introduction.”¹¹

Both SBC and Verizon indicate that the costs to provide the EMP shielding proposed by Petitioners would be extraordinary.¹² It is difficult to imagine how even the largest carriers could absorb such costs and continue make other necessary investments in their networks. For smaller carriers, it would be a near impossible undertaking.

USTA believes that it would be a disservice to the industry and the public for the Commission to commence a rulemaking where: 1) the alleged cause for concern is speculative at best; 2) the industry has responded to reasonably-anticipated EMP harms with standards in a timely and responsible manner; 3) the proposed remedial action would result in carriers (and their customers) incurring extraordinary costs; and 4) the proposed remedial action would not provide the protection envisioned. Accordingly, USTA respectfully requests that the Commission deny the Petition.

Sincerely,

Lawrence E. Sarjeant
Vice President Regulatory Affairs
and General Counsel

cc: K. Dane Snowden, Chief, CIB

¹⁰ Declaration of Percy E. Pool at p.2.

¹¹ *Id.* at p.3.

¹² *See* SBC at p.1; Verizon at p.1.